

REMARKS

Applicant respectfully requests reconsideration of this application in view of the following remarks. This response is believed to fully address all issues raised in the Office Action mailed May 7, 2007. Furthermore, no new matter is believed to have been introduced hereby.

Claims 1-52 remain pending in this application. Claims 7, 18, and 23-35 have been amended as detailed above.

Claim Objections

The Office has objected to claims 1, 14, and 48 by stating:

Claim Objections

3. As to claims 1, 14, and 48, a claim preamble should set forth at least an environment or objective. Appropriate correction is required.

In response, the undersigned respectfully submits that the Office appears to be mixing the words “should” and “required” inappropriately in the above recited objection. It is kindly submitted that the use of the word “should” does not “require” anything and “should” merely indicates a preference.

Moreover, the Office has not provided any support for the requirement and the undersigned is unable to find any such requirement in the MPEP. Accordingly, these objections are believed to be moot and the Office is urged to provide an authority for such requirement if the objections are maintained in a subsequent Office Action.

35 USC § 112 Rejection of the Claims

It is believed that the amendments detailed above fully address the rejection of claims 7, 18, 23, and 29 under 35 USC § 112, second paragraph.

35 USC § 101 Rejection of the Claims

The amendments provided above are believed to fully address the rejection of claim 23 under 35 USC § 101.

35 USC §102 Rejection of the Claims

Claims 1-2, 4-12, 14-19, 21-24, 26-34, 36, 38-39, 41-42, 44-45, and 47-51 were rejected under 35 USC § 102(e) as being anticipated by Robert et al. (U.S. Publication No. 2004/0003296 A1).

These rejections are respectfully traversed.

Initially, the Office is respectfully reminded of the requirements of MPEP §2131 that states a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). As discussed herein, the Office fails to meet this requirement with respect to rejection of claims 1-2, 4-12, 14-19, 21-24, 26-34, 36, 38-39, 41-42, 44-45, and 47-51.

For example, in rejecting claim 1, the Office states that:

13. As to claim 1, Robert discloses a method comprising: selectively determining a new transmission speed different from a current transmission speed between a local network device and a linked network device in response to a speed change event ([0019], ln. 1-7; [0020], ln. 1-12); and

The cited portion of Robert states:

[0019] The PHY 16 typically is configured for performing autonegotiation with a link partner, where the PHY 16 and the corresponding link partner determine the highest data rate for transmission; for example, during autonegotiation the PHY 16 may be configured to select, in order of descending priority, 100Base-TX, full duplex, 100Base-TX, half duplex, 10BaseT, full duplex, or 10BaseT, half duplex.

[0020] According to the disclosed embodiment, the controller 20 is configured for setting the PHY 16 into a low-power mode that minimizes power consumption while the workstation system 10 enters a low-power mode, for example where the workstation computer will shut itself down after a prescribed interval of activity while enabling the MAC 14 to initiate a wake-up routine in response to a remote command received from the network medium 12. In particular, the controller 20 resets the selected data rate in the PHY 16 to the low data rate (e.g., 10BaseT at half duplex), and restarts the autonegotiation process in the PHY 16 for the lower data rate. The use of a lower data rate such

As can be readily seen, the cited portion of Robert fails to teach (or even suggest) the claimed combination of features such as set forth in claim 1 including “selectively determining a new transmission speed different from a current transmission speed between a local network device and a linked network device in response to a speed change event.” For example, Robert fails to teach any selective determination whether or not it is in response to a speed change event. Moreover, the cited portions of Robert only appear to “determine the highest data rate for transmission.” *See, e.g., lines 3-4 of paragraph [0019]*. This clearly teaches away from the claimed selective determination, among other elements recited in claim 1.

The Office goes on to state that:

transmitting a speed change request and the new transmission speed to the linked network device to request the local and linked network devices to communicate at the new transmission speed, wherein the transmitting occurs while maintaining a linked exchange between the local and linked network devices ([0023], ln. 1-3; [0024] – [0025]).

The cited portion of Robert states:

[0023] The method begins in step 30, where the controller 20 receives a powerdown request from the operating system of the workstation system 10. The controller checks in step

[0024] If in step 31 no parallel detection is used, the controller 20 resets the Autonegotiation Advertisement Register (R4) 22c in step 32 via the management data input/output (MDIO) path for negotiating a lower data rate, for example 10BaseT at half duplex. For example, the controller 20 would set bits 8-5 of R4 to 0001 binary, causing the PHY 16 to advertise its best capabilities as 10 Mbps half duplex. The controller 20 then restarts the autonegotiation process in step 34 by resetting bit 9 of the MII management control Register (R0) 22a to "1".

[0025] The controller 20 monitors in step 42 bit 5 of the MII Management Status Register (R1) 22b to determine in step 44 when autonegotiation is complete. As recognized in the art, autonegotiation logic circuitry within the PHY 16 compares the advertised capabilities in the register 22c with the determined link partner abilities identified in the register 22d to identify a best match, which should be 10 Mbps half duplex based on step 32.

As can be readily seen, the portions of Robert relied on by the Office appear to only contemplate a "power down request" and not the claimed speed change request. Furthermore, claim 1 in part recites "transmitting a speed change request and the new transmission speed to the linked network device to request the local and linked network devices to communicate at the new transmission speed, wherein the transmitting occurs while maintaining a linked exchange between the local and linked network devices". As can be seen, the cited portions of Robert fail to teach (or even suggest) the claimed combination of features such as set forth in claim 1, including for example transmitting a speed change request and the new transmission speed to the linked network device or maintaining a linked exchange, among other elements recited in claim 1.

Accordingly, claim 1 is in condition for allowance. All remaining independent claims have been rejected for similar reasons as claim 1 (see, outstanding Office Action) and these

claims which recite similar (though not identical) language should be allowable for at least similar reasons as claim 1.

Also, all pending dependent claims should be allowable for at least similar reasons as their respective independent claims, as well as additional or alternative elements that are recited therein but not shown in the cited prior art.

For example, with respect to claims 7, 18, and 29, the cited portion of Robert fails to teach the claimed operation to “increase the transmission speed if the local network device is capable of transmitting at a transmission speed that is higher than the current transmission speed,” among other elements of these claims. In fact, Robert appears to teach away from increasing transmission speeds as its main goal appears to be saving power (see, e.g., Robert’s title and abstract).

Also, but reference to claims 12 and 34, the cited portion of Robert clearly fails to teach a speed change event (as discussed with reference to claim 1) or the speed change event comprising “an application program determining an anticipated increase of data transmissions through the local network device” or that “the new transmission speed is higher than the current transmission speed.” These claimed combination of features are simply not taught by Robert. In fact, Robert appears to teach away from increasing transmission speeds as its main goal appears to be saving power (see, e.g., Robert’s title and abstract).

35 USC §103 Rejection of the Claims

Claims 3, 13, 20, 25, 35, 37, 40, 43, 46, and 52 were rejected under 35 USC § 103(a) as being unpatentable over Robert et al. (U.S. Publication No. 2004/0003296) in view of Murase et al. (U.S. Patent No. 6,298,042 B1).

These rejections are respectfully traversed.

Initially, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. See, MPEP § 2142 - § 2143.03.

It is respectfully submitted that the Office clearly fails the last criterion by not establishing that all the claim limitations are taught by the cited art.

For example, in rejecting claim 3, the Office in part states:

Robert is silent on the packet being a preamble packet that is transmitted at the beginning of data packets or, alternatively, an idle transmission between packets to synchronize data transmissions.

However, claim 3 recites:

3. The method of claim 1, wherein transmitting the speed change request comprises including the speed change request and the new transmission speed in a preamble packet that is transmitted at the beginning of data packets or in an idle transmission between packets to synchronize data transmissions at the current transmission speed.

As can be seen, the Office is misreading claim 3 by stating “or, alternatively, an idle transmission ...” That is not claimed. Claim 3 clearly indicates that the speed change request may include the speed change request and the new transmission speed in a preamble ... or in an idle transmission ...

Hence, claim 3 is in condition for allowance. Claim 25 has been rejected for the same reasons as claim 3 and should be allowable for at least similar reasons.

Additionally, with respect to claim 13, the Office in part states that:

However, Murase discloses the speed change event is based on a detected change in network traffic at the local network device (Col. 3, ln. 64 – Col. 4, ln. 21).

However, the cited portion of Murase says nothing about the claimed language. For the Office's ease of reference the cited portion of Murase is reproduced below which states:

The present invention have a yet another object to provide a packet switching apparatus in which a time of protection 65 is set to judge whether a transmitting terminal is in pause of transmission to prevent the throughput from being reduced

due to a frequent initialization of ACR, and a method of controlling the transmission rate.

According to the first aspect of the invention, a packet switching apparatus adapted to determine and control an
5 allowed transmission rate for a transmitting terminal connected in a packet switching network in which a band is controlled by a feedback control, comprises

means for monitoring the interval of packet reception for each connection, and judging, based on the interval of
10 packet reception, whether the transmitting terminal having sent the packet is in pause of transmission and determining a first allowed transmission rate for the transmitting terminal correspondingly to a result of the judgment,

15 means for calculated a second allowed transmission rate based on a predetermined algorithm, and

means for selecting a smaller one among the first allowed transmission rate determined by the rate discriminating means and the second allowed transmission rate calculated by the rate calculating means, and writing it
20 into a packet returned to the transmitting terminal.

The Office goes on to cite column 3, lines 45-47 of Murase which is reproduced below for Office's ease and adds no further teaching regarding the claimed language:

transmission network and adapted to prevent the network
from being suddenly applied with a high load without any 45
rapid change of the actual transmission rate to a high value

Hence, claim 13 is in condition for allowance. Claims 20, 35, 37, 40, 43, 46, and 52 have been rejected for the same reasons as claim 13 and should be allowable for at least similar reasons.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (720-840-6740) to facilitate prosecution of this application.

The applicant hereby petitions and submits the appropriate fee for extending the deadline to respond to the outstanding Office Action for one month from August 7, 2007, to September 7, 2007.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-4238.

Respectfully submitted,

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Date September 7, 2007 By /Ramin Aghevli/
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